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October 9, 2009

PUBLIC VERSION

Mr. Andrew McGilvray
Executive Secretary
Foreign-Trade Zones Board
U.S. Department of Commerce
1401 Constitution Avenue, N.W., Room 2111
Washington, DC 20230

**Re: Foreign-Trade Zone 82, Application for Subzone Authority,
ThyssenKrupp Steel and Stainless USA, LLC**

Dear Mr. McGilvray:

Pursuant to the Department's notice announcing an extension of the comment period in the above-captioned matter, 74 Fed. Reg. 47,921 (Sept. 18, 2009), we submit the following comments on behalf of the Flat-Rolled Task Force of the Specialty Steel Industry of North America. For the reasons discussed below, and as the Flat-Rolled Task Force has maintained throughout this proceeding, the ThyssenKrupp sub-zone application should be denied as it fails to meet the Foreign-Trade Zones Board's regulatory requirements for establishment of a manufacturing sub-zone.

I. ThyssenKrupp's Sub-Zone Application Fails to Satisfy the Relevant Regulatory Requirements and Should be Denied

The Foreign-Trade Zones Board's ("the Board") regulations establish specific requirements that must be satisfied by a sub-zone applicant. In subjecting applications for manufacturing and processing activity to heightened scrutiny, the Board's regulations provide that it will deny an application if it determines that:

"(i) The activity is inconsistent with U.S. trade and tariff law, or policy which has been formally adopted by the Executive Branch;

(ii) Board approval of the activity under review would seriously prejudice U.S. tariff and trade negotiations or other initiatives; or

(iii) The activity involves items subject to quantitative import controls or inverted tariffs, and the use of zone procedures would be the direct and sole cause of imports that, but for such procedures, would not likely otherwise have occurred
..."

Mr. Andrew McGilvray
October 9, 2009
Page Two

19 C.F.R. § 400.31(b)(1). If the Board determines that none of these threshold factors is triggered by a sub-zone application, it will then consider whether the proposed activity has a positive net economic effect based upon the consideration of a series of relevant factors. See 19 C.F.R. § 400.31(b)(2). Because ThyssenKrupp's sub-zone application is inconsistent with the threshold factors identified in 19 C.F.R. § 400.31(b)(1), and because establishment of a sub-zone at ThyssenKrupp's facility in Calvert, Alabama would not create a net economic benefit, the application should be denied.

A. ThyssenKrupp's Application Is Contrary to U.S. Trade Law and Policy

A first disqualifying factor for a sub-zone application is where the Board determines the proposed activity is "inconsistent with U.S. trade and tariff law, or policy which has been formally adopted by the Executive Branch." 19 C.F.R. § 400.31(b)(1)(i). ThyssenKrupp's sub-zone application is inconsistent with the Trade Act of 2002, in which the Congress identified objectives to be pursued by the Executive Branch in negotiating trade agreements. The first two objectives identified in that legislation are: (1) obtaining reciprocal market access; and (2) reducing or eliminating foreign barriers in order to increase opportunities for U.S. exporters. See Trade Act of 2002, Pub. L. 107-210, § 2102(a)(1)-(2), 116 Stat. 933 (2002).

Numerous witnesses appearing in support of ThyssenKrupp's application stressed that the benefits sought by ThyssenKrupp would be available to all domestic steel producers. See, e.g., Tr. at 17¹ ("We understand that this opportunity is also available to all of our fellow U.S. domestic steel producers.") (testimony of Michael Lutter), id. at 22 ("All U.S. producers that are similarly situated have exactly the same options as ThyssenKrupp.") (testimony of William Methenitis), id. at 27-28 ("The FTZ designation is something that is available to all companies, and which any domestic manufacturer can request.") (testimony of Rep. Bonner), and id. at 33 ("[T]he Foreign Trade Zones Board, in approving the ThyssenKrupp application, will be setting a precedent that will be available to the entire U.S.-based steel-producing industry, and in doing so will make all U.S.-based steel producers eligible to use foreign trade zone procedures as a means of eliminating custom duties on imported alloys as a part of their cost structure.") (testimony of Mayor Samuel Jones).

ThyssenKrupp's position, thus, would effectively result in the unilateral elimination of tariffs on imported ferroalloys. Such a position, however, is directly contrary to the first negotiating objective set out in the Trade Act of 2002 – to obtain reciprocal market access. As reflected in Exhibit 1, numerous foreign countries that are significant producers of stainless steel (and thus importers of raw materials) maintain duties on ferroalloys. Adoption of ThyssenKrupp's position would eliminate the ability of the U.S. Trade Representative to negotiate reciprocal market openings for U.S. exports of ferroalloys, because the impact of U.S.

¹ Citations to the transcript of the Board's September 10, 2009 hearing on the ThyssenKrupp sub-zone application are identified as "Tr. at ____."

duties would be rendered meaningless with all U.S. stainless steel producers importing those products duty-free through Foreign-Trade Zones. As such, ThyssenKrupp's application is inconsistent with U.S. trade law and should be denied.

B. Board Approval of ThyssenKrupp's Application Would Seriously Prejudice U.S. Tariff and Trade Negotiations

A second disqualifying factor for a sub-zone application is where the Board determines the proposed activity "would seriously prejudice U.S. tariff and trade negotiations." 19 C.F.R. § 400.31(b)(1)(ii). As discussed in the immediately preceding section, those supporting ThyssenKrupp's application contemplate other U.S. stainless steel producers seeking (and receiving) similar treatment – effectively resulting in the unilateral elimination of U.S. duties on imported ferroalloys. Such an outcome would eliminate any negotiating leverage provided by the existence of those tariffs, and would significantly impair the ability of the U.S. Trade Representative to negotiate reciprocal tariff eliminations. As such, granting ThyssenKrupp's application would also seriously prejudice U.S. tariff negotiations and, thus, should be denied.

C. Approval of ThyssenKrupp's Application Would Be the Direct and Sole Cause of the Importation of Items Subject to Inverted Tariffs

A third disqualifying factor for a sub-zone application is where the Board determines the proposed activity "would be the direct and sole cause of imports" subject to inverted tariffs "that, but for such procedures, would not likely otherwise have occurred." 19 C.F.R. § 400.31(b)(1)(iii). While ThyssenKrupp has made clear that it will import some ferroalloys regardless of whether the sub-zone application is approved, a decision to grant the sub-zone application will provide ThyssenKrupp with additional leverage to force down the prices paid to its U.S. suppliers of ferroalloys. To the extent these U.S. suppliers are unwilling to lower their prices to meet ThyssenKrupp's ability to import ferroalloys duty-free, ThyssenKrupp will have an attractive option for sourcing those materials abroad, and those increased imports will be a "direct and sole cause" of a decision to grant the sub-zone application.

D. No Net Economic Benefit

For the reasons stated above, ThyssenKrupp's application should be denied based on a consideration of the threshold factors enumerated in 19 C.F.R. § 400.31(b)(1). Should the Board nevertheless conclude that the application *does* satisfy the applicable threshold factors, the record makes clear that a decision to grant the application would not generate any net economic benefits. Indeed, granting the application would be likely to result in negative economic consequences for existing U.S. producers of flat-rolled stainless steel products.

The record is devoid of any indication that the Board's approval of ThyssenKrupp's sub-zone application would generate a net economic benefit. Indeed, those in support of ThyssenKrupp's application have made clear that ThyssenKrupp will proceed with the

construction and operation of its Calvert, Alabama facility regardless of the Board's ultimate action on the sub-zone application. See Tr. at 22 ("Of course, the plant is going to be built with or without foreign trade zone {status}. ThyssenKrupp also expects the plant will be successful with or without foreign trade zone {status}.") (Testimony of William Methenitis). While ThyssenKrupp has raised the prospect that it could expand operations at the Calvert facility if it is successful,² any such expansion is speculative and there is no correlation identified on the record between the granting of ThyssenKrupp's sub-zone application and an expansion of the Calvert facility.

Not only will a decision by the Board to grant ThyssenKrupp's application not produce a net economic benefit, it will negatively impact the operations of existing producers of stainless steel flat-rolled products. As stated by numerous witnesses at the Board's September 10, 2009 hearing, a decision to grant the ThyssenKrupp sub-zone application would have a negative impact on the competitiveness of current domestic producers and their workers. See, e.g., Tr. at 68-70 (noting that the effective elimination of even modest import duties on ferroalloys "will confer a substantial benefit on ThyssenKrupp" relative to other domestic producers due to the "intensely competitive market for stainless products, where very small margins determine whether a sale is made or is captured by a competitor") (testimony of Mr. Hartford); id. at 53 ("We believe that granting ThyssenKrupp this FTZ subzone status would adversely impact our members in the steel industry, and downstream producers like -- that make pipe, and also upstream producers like a silicon metal producer that we have in the United States.") (testimony of Ms. Andros). Accordingly, because a decision to grant the ThyssenKrupp sub-zone application would not produce a net economic benefit, but rather would create a relative disadvantage for U.S. producers with operations in states such as Pennsylvania, Connecticut, Indiana, and Ohio, the Board should deny the application.

II. Responses to Questions Posed by the Board

A. Identification of Ferroalloys Imported by ATI Allegheny Ludlum and Consumed in the Production of Stainless Steel

During the September 10 hearing, Mr. Hartford was asked to identify the ferroalloys that ATI Allegheny Ludlum sources from abroad and consumes in its operations. See Tr. at 150-51 (question of Ms. Whiteman). Attached at Exhibit 2 is a document detailing the imported ferroalloys consumed by ATI Allegheny Ludlum in its stainless steel operations in 2008.

² See ThyssenKrupp's Aug. 27, 2008 Application at 5 (noting that an additional 850 jobs could "potentially" be added "{i}f operations are successful.").

Mr. Andrew McGilvray
October 9, 2009
Page Five

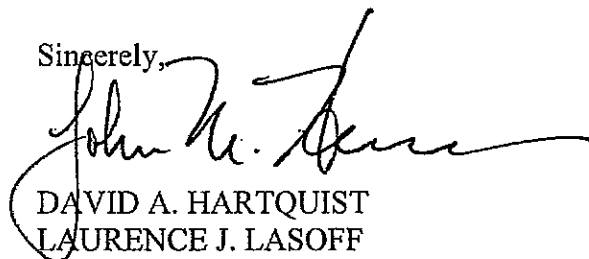
B. No Member of the Flat-Rolled Task Force Has Previously Considered Applying for FTZ Approval to Conduct Manufacturing Operations

An additional question posed to witnesses affiliated with domestic steel producers inquired whether those companies "had considered in the past requesting zone status" for a situation similar to the circumstances identified in the ThyssenKrupp application. Tr. at 106 (question by Acting Assistant Secretary Lorentzen). As stated by Mr. Hartford at hearing, ATI Allegheny Ludlum has not investigated or pursued FTZ status for any of its facilities. See Tr. at 137-38. Further, the undersigned are not aware of any instance in which a U.S. producer of flat-rolled stainless steel products has considered pursuing an application for a grant of zone or sub-zone authority to engage in manufacturing activity.

* * *

Please do not hesitate to contact the undersigned should you have any questions concerning this submission.

Sincerely,



DAVID A. HARTQUIST
LAURENCE J. LASOFF
JOHN M. HERRMANN

Counsel
Flat-Rolled Task Force of the
Specialty Steel Industry of North America

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EXHIBIT 1

Import Duties of Stainless Steel Inputs Exported from the United States

<u>Input Material</u>	<u>HTS Heading*</u>		<u>Additional Description</u>	<u>Importing Coun</u>		
				<u>EU (Germany, Italy)^a</u>	<u>Japan^b</u>	<u>Korea^c</u>
1 Ferrochromium	7202.41	(3%<C<4%)		4.00%	5.30%	3.00%
	7202.49	(Other)		7.00%	3.18%	3.00%
2 Ferrocolumbium	7202.93	(Ferroniobium)		0.00%	2.50%	6.00%
3 Ferrosilicon	7202.21	(55%<Si)		5.70%	0.00%	3.00%
4 Ferrosilicomanganese	7202.30			3.70%	2.00%	8.00%
5 Ferromanganese	7202.11	(2%<C<4%)		2.70%	5.04%	8.00%
	7202.19	(Other)		2.70%	5.04%	8.00%
6 Molybdenum	8102.94	(Unwrought, including bars/rods obtained simply by sintering)		3.00%	0.00%	5.00%
7 Titanium	8108.20	(Unwrought; powders)		5.00%	3.00%	5.00%
	8108.90	(Other)		0.00%	3.00%	8.00%

Notes:

a: Data Source- EU Taxation & Customs Union (9/4/09). Imports duties to EU member states are unified.

b: Data Source- Japan Customs (6/1/09). Tariffs are WTO rates if no GSP rate is specified.

c: Data Source- Korean HT Schedule (1/1/06) via USTR

d: Data Source- China Tariff Schedule (1/2002) via USTR. Tariffs are bound WTO rates at date of accession. The Chinese HS for simple sintered molybdenum is 8102.91, which includes waste & scrap. The Chinese HS classification of unwrought Titanium includes sponge, waste, and scrap.

e: Data Source- Indian Central Board of Excise and Customs (9/2008).

Prepared by Georgetown Economic Services

EXHIBIT 2

**THE BUSINESS PROPRIETARY ATTACHMENT
IS NOT SUSCEPTIBLE TO SUMMARIZATION
AND THEREFORE IS NOT PROVIDED
WITH THIS PUBLIC VERSION**